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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Legislative Department)

New Delhi, the 6th July, 1974/Asadha 15, 1896 (Saka)

THE ADDITIONAL EMOLUMENTS (COMPULSORY
DEPOSIT) ORDINANCE, 1974

No. 8 OF 1974

Promulgated by the President in the Twenty-fifth Year of the
Republic of India.

An Ordinance to provide, in the interests of national economic
development, for the compulsory deposit of additional emolu-
ments and for the framing of a scheme in relation thereto, and
for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied
that circumstances exist which render it necessary for him to take imme-
diate action;

Now, THEREFORE, in exercise of the powers conferred by clause (1) of
article 123 of the Constitution, the President is pleased to promulgate the
following Ordinance:—

CHAPTER I

PRELIMINARY

1. (1) This Ordinance may be called the Additional Emoluments
(Compulsory Deposit) Ordinance, 1974.

Short
title, ex-
tent and
commence-
ment.

Defini-
tions.

(2) It extends to the whole of India.

(3) It shall come into force at once.

2. In this Ordinance, unless the context otherwise requires,—

(a) “appointed day” means the day on which this Ordinance comes into force;

(b) “additional dearness allowance” means such dearness allowance as may be sanctioned from time to time, after the appointed day, over and above the amount of dearness allowance payable immediately before the date from which such sanction of additional dearness allowance is to take effect;

(c) “additional wages” means such wages, over and above the wages payable to an employee immediately before the appointed day, as may become payable to the employee after the appointed day in pursuance of any wage revision, whether by or under an agreement or settlement between the parties or any award, decree or order of any court, tribunal or other authority, but does not include—

(i) any increment due to the employee in accordance with the time scale of pay applicable to the post held by him immediately before the appointed day, and any consequent increase in any allowance admissible under any rule or order in force immediately before the appointed day;

(ii) any higher wages payable to the employee on his promotion or transfer to a post involving higher responsibilities and duties;

(iii) any honorarium payable for any work done outside office hours;

(iv) any allowance payable for over-time work;

(v) any increase in wages sanctioned in pursuance of the recommendations made by the Third Central Pay Commission;

(d) “bank deposit rate” means the maximum rate at which interest may be paid by a banking company on deposits (other than those maintained in saving accounts) in accordance with the directions made by the Reserve Bank of India in exercise of the powers conferred on it by section 21 or section 35A, or both, of the Banking Regulation Act, 1949;

10 of 1949.

(e) “Deposit Account” means the account opened and maintained under section 5;

(f) “emoluments” includes wages and dearness allowance;

(g) “employer” means,—

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, and where a person is named as manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948, the person so named;

63 of 1948.

(ii) in relation to an establishment belonging to or under the control of the Central Government or a State Government, the person or authority appointed by the appropriate Government for the supervision and control of the employees, or where no person has been so appointed, the head of the Department concerned;

(iii) in relation to an establishment belonging to or under the control of any local authority, the person appointed by such authority for the supervision and control of the employees, or where no person has been so appointed, the Chief Executive Officer of the local authority;

(iv) in any other case, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person,

and includes, in the case of a deceased employer, the legal representative of such deceased employer;

(h) "notification" means a notification published in the Official Gazette;

(i) "prescribed" means prescribed by rules made under this Ordinance;

(j) "scheme" means a scheme made under this Ordinance;

(k) "wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed, or capable of being expressed, in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—

(i) any remuneration payable under any agreement, or settlement between the parties or any decree or order of any court, tribunal or other authority;

(ii) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(iii) any additional remuneration payable under the terms of employment, including bonus, whether under a scheme of profit sharing or otherwise;

(iv) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(v) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

(vi) any allowance paid for house accommodation, or where house accommodation is provided, the value of such accommodation, and the value of electricity or water, or both, supplied, and the value of medical attendance or other amenity,

but does not include—

(1) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(2) any travelling allowance or the value of any travelling concession;

(3) any sum, not exceeding rupees two hundred and fifty per annum, paid to the employed person to defray special expenses entailed on him by the nature of his employment;

(4) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (iv);

(5) any dearness allowance.

Persons
to whom
this Or-
dinance
applies.

3. This Ordinance shall apply to an employee of—

(a) the Central or State Government;

(b) a local authority;

(c) a company as defined in section 3 of the Companies Act, 1956, including a foreign company within the meaning of section 591 of the Companies Act, 1956, and a Government company as defined in section 617 of that Act;

(d) any other corporation, including a society established by or under a Central, Provincial or State Act;

(e) any individual, association or body of individuals or Hindu undivided family liable to payment of tax under the Income-tax Act, 1961, and entitled to deduct from the wages paid to the employees for the purpose of determination of income-tax under that Act;

(f) any establishment, not being an establishment owned by Government, local authority or person specified, respectively, in clauses (a) to (e) (both inclusive), to which the provisions of any law relating to provident funds (other than those established under the Public Provident Fund Act, 1968) apply;

23 of 1968.

(g) any other establishment, not being an establishment to which any of the foregoing clauses apply, established at the instance or in pursuance of a resolution, of the Central Government or wholly or substantially financed by that Government.

Ordinance
to have
overrid-
ing effect.

4. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance or in any instrument having effect by virtue of any enactment other than this Ordinance.

CHAPTER II

COMPULSORY DEPOSIT OF ADDITIONAL EMOLUMENTS

Additional
Wages De-
posit Ac-
count and
the Addi-
tional
Dearness
Allowance
Deposit
Account.

5. (1) There shall be opened by such authorities as may be specified in the scheme (hereinafter referred to as the specified authority) two separate accounts, to be known, respectively, as the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, and different authorities may be specified for different categories of establishments.

(2) The specified authority shall, in relation to each Deposit Account, open a separate ledger account in the name of each employee in relation to whom any contribution is made to the said Account, and credit the contributions so made in the said ledger account.

6. (1) For the purposes of this Ordinance, the deductions specified in sub-section (2) shall be made,—

(a) in the case of additional wages, for a period of one year from the appointed day, and

(b) in the case of additional dearness allowance, for a period of two years from the appointed day.

(2) On the commencement of this Ordinance,—

(a) every employer, who draws or disburses, after the appointed day, wages of an employee to whom this Ordinance applies, shall, as and when wages are disbursed by him for any period, deduct from the wages so disbursed, the whole of the additional wages and one-half of the additional dearness allowance and credit the amount so deducted, in accordance with the scheme, to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively;

(b) any gazetted or other officer to whom this Ordinance applies, who draws, after the appointed day, his own wages, shall make deductions in each wage bill in respect of the whole of the additional wages and one-half of the additional dearness allowance, and the authority which maintains the accounts of the wages drawn by such gazetted or other officer shall credit the amount so deducted, in accordance with the scheme, to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively;

(c) every other employer, who disburses, after the appointed day, wages to any employee to whom this Ordinance applies, shall, as and when wages are disbursed by him for any period, deduct from the wages so disbursed, the whole of the additional wages and one-half of the additional dearness allowance, and shall remit, in accordance with the scheme, the amount so deducted to such authority as may be nominated by the Central Government in this behalf, and on receipt of such amount the nominated authority shall credit the amount so received to the account of the concerned employee in the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account, respectively.

(3) The specified authority shall, as soon as may be practicable after the end of each year, prepare separately, in relation to the amounts credited to the respective Deposit Accounts to the credit of each employee, and furnish to the employee a copy of the said accounts showing therein separately the amounts credited thereto in relation to the employee and the interest due thereon.

7. (1) Every amount credited under section 6, in relation to an employee in a Deposit Account, shall carry simple interest at a rate, which shall be two and a half per cent. over and above the bank deposit rate.

(2) The interest due on the amount credited in any Deposit Account shall be calculated in such manner as may be specified in the scheme.

Duty of employer or other person to make deductions of additional wages and additional dearness allowance from wages.

Deposits to carry simple interest.

(3) Interest accruing on amounts credited under section 6 to any Deposit Account shall enure to the benefit of the employee in relation to whom such amounts have been credited.

(4) For the purpose of the deduction under section 80L of the Income-tax Act, 1961, interest received on a deposit under this Ordinance shall be deemed to be interest received on a deposit with a banking company to which the Banking Regulation Act, 1949, applies. 43 of 1961. 10 of 1949.

Assessment for the purpose of income-tax.

8. (1) For the purposes of computing, under the Income-tax Act, 1961, the total income of an employee, the amount credited to his ledger account in the Additional Wages Deposit Account or the Additional Dearness Allowance Deposit Account shall not be included in his total income of the previous year in which it is so credited; but so much of the amount as is repaid to him shall be liable to be included in his total income of the previous year in which it is repaid. 43 of 1961.

(2) For the purposes of computing, under the Income-tax Act, 1961, the total income of an employee, the amount repaid to him under this Ordinance shall be deemed to be salary paid to him in arrears and the provisions of sub-section (1) of section 89 of that Act shall apply accordingly. 43 of 1961.

Explanation.—In this section, “previous year” and “total income” have the meanings respectively assigned to them in the Income-tax Act, 1961. 43 of 1961.

Repayment of deposits,

9. (1) Subject to the provisions of sub-section (2), every amount credited to the Deposit Accounts shall be repayable with interest due thereon,—

(a) in the case of an amount credited to the Additional Wages Deposit Account, at any time after the expiry of one year from the appointed day; and

(b) in the case of an amount credited to the Additional Dearness Allowance Deposit Account at any time after the expiry of two years from the appointed day:

Provided that nothing in this section shall prevent earlier repayment of any amount credited to either of the Deposit Accounts with interest due thereon in any case in which the authority empowered to make such repayment is satisfied that extreme hardship will be caused unless such repayment is made:

Provided further that an employee may, at his option, retain the whole or any part of the amount credited in relation to him in the Additional Wages Deposit Account or the Additional Dearness Allowance Deposit Account, or both, until his superannuation or until such date as may be specified by the Central Government in this behalf:

Provided also that the whole of the amount standing to the credit of an employee in either or both of the Deposit Accounts shall be repaid to him on his superannuation or resignation from office or if he ceases to be in the service of the employer by whom the amount was credited to the Deposit Account.

(2) The aggregate amount credited to any Deposit Account by or in relation to an employee shall be repaid to the employee in five equal annual instalments commencing from the expiry of one year or two years, as the case may be, from the appointed day, together with interest due on unpaid instalment or instalments.

10. (1) The Central Government shall, by notification, frame one or more schemes, to be called the "Additional Emoluments Compulsory Deposit Scheme", in relation to the amounts credited to the Deposit Accounts under this Ordinance.

Additional
Emolu-
ments
Compul-
sory
Deposit
Scheme.

(2) A scheme framed under sub-section (1) may provide for—

(a) the authorities by which the Additional Wages Deposit Account and Additional Dearness Allowance Deposit Account shall be opened and maintained;

(b) the manner in which amounts deducted from additional wages or additional dearness allowance shall be credited to the respective Deposit Account;

(c) the documents to be issued to persons in relation to whom amounts have been credited to the Deposit Accounts as evidence of such credit;

(d) authority or authorities by or through which credits to the Deposit Accounts may be made;

(e) the accounts to be maintained with respect to the amounts credited to the Deposit Accounts and the officer by whom such Accounts shall be maintained;

(f) the nomination of persons to receive the amount standing in a Deposit Account to the credit of an employee in the event of his death; and cancellation or change of such nomination;

(g) the issue of duplicate of any document issued as evidence of any credit in the event of loss or destruction of the original and the fee, not exceeding rupees two, on the payment of which such duplicate may be issued;

(h) repayment of amounts credited to the Deposit Accounts with interest due thereon and the conditions, if any, under which such repayment may be made;

(i) any other matter which may be necessary or proper for the effective implementation of the scheme.

(3) A scheme framed under this section may provide that all or any of its provisions shall take effect, either prospectively or retrospectively, on such date as may be specified in this behalf in the scheme and every scheme framed under this section shall have effect notwithstanding anything contained in any law (other than this Ordinance) for the time being in force or in any instrument having effect by virtue of any enactment other than this Ordinance.

(4) The Central Government may make a scheme to add to, amend or vary any scheme made under sub-section (1).

11. Where the amount of any credit to be made in any Deposit Account contains a part of a rupee, then, such part, if it is fifty paise or more, shall be increased to one complete rupee and if it is less than fifty paise, it shall be ignored.

Rounding
off.

CHAPTER III

MISCELLANEOUS

Penalties.

12. (1) Whoever, with a view to—

(a) avoiding making any deductions of additional wages and additional dearness allowance and crediting the same to the Additional Wages Deposit Account or the Additional Dearness Allowance Deposit Account, as the case may be, or

(b) aiding or abetting any other person to avoid making any such deduction or credit,

knowingly makes, or causes to be made, any statement or representation which he knows to be false or does not believe to be true, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Any employer who omits or fails, without any reasonable excuse, to comply with the provisions of this Ordinance or of any scheme or order made under the scheme, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Offences
by
companies.

13. (1) Where an offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Ordinance, has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals; and

(b) “director”, in relation to a firm, means a partner in the firm, and, in relation to a Hindu undivided family, means the *Karta* of such family.

Power to
exempt.

14. Where the Central Government is of the opinion that it is necessary or expedient so to do either in the public interest or having regard to the peculiar circumstances of any case, it may, by notification, and subject to such conditions, if any, as it may specify in the notification,—

(a) exempt any establishment or category of employees working in any establishment from the operation of all or any of the provisions of this Ordinance;

(b) exempt, in the case of extreme hardship to any employee, from crediting any amount in relation to such employee to the Additional Wages Deposit Account;

(c) empower deductions from additional wages in relation to an employee or class of employees, at a rate lesser than the rate specified in this Ordinance.

15. The Central Government may, by notification, direct that any power which may be exercised by it under this Ordinance or any scheme framed under this Ordinance shall, subject to such restrictions and conditions, if any, as it may specify in the notification, be exercised also by—

(a) such officer or authority subordinate to Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government; or

(c) such other authority as may be specified in the notification.

16. (1) The amount standing to the credit of any employee in any Deposit Account shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability incurred by the employee.

Protection against attachment.

(2) Any amount standing to the credit of an employee in any Deposit Account at the time of his death and payable to his nominee under the scheme shall vest in the nominee and shall be free from any debt or other liability incurred by the deceased or incurred by the nominee before the death of the employee.

17. (1) The specified authority may call for such returns as may be prescribed from any employer to whom this Ordinance applies.

Power to call for returns and inspect accounts.

(2) The books of account and other books and papers of any employer to whom this Ordinance applies shall be open to inspection by the specified authority or any officer of Government authorised by the Central Government in this behalf during the business hours:

Provided that such inspection may be made without giving any previous notice to the employer or any officer of the employer.

(3) The specified authority or any authorised officer may during the course of inspection,—

(i) make, or cause to be made, copies of the books of account and other books and papers;

(ii) place, or cause to be placed, any marks of identification thereon in token of the inspection having been made.

(4) It shall be the duty of every employer to whom this Ordinance applies, to produce such books of account and other books and papers as the specified authority or the officer making the inspection may require.

18. No suit or other legal proceeding shall lie against the Central Government or any State Government or any officer authorised by the Central or State Government to discharge any functions under this Ordinance, for any loss or damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance.

Protection of action taken in good faith.

Recovery
of arrears.

19. Any amount which ought to have been credited under this Ordinance to a Deposit Account but has not been so credited, shall be recoverable as an arrear of land revenue.

Power
to make
rules.

20. (1) The Central Government may, by notification, make rules to carry out the provisions of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the conditions under which any category of employees may be exempted from the provisions of this Ordinance;

(b) the manner in which interest is to be computed on the amounts deposited in the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account;

(c) the manner in which withdrawals from the Additional Wages Deposit Account or Additional Dearness Allowance Deposit Account may be made;

(d) any other matter in relation to which such rule is required to be, or may be, made.

(3) Every rule and every scheme made by the Central Government under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the scheme, as the case may be, or both Houses agree that the rule or scheme, as the case may be, should not be made, the rule or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or scheme.

Power
to re-
move diffi-
culties.

21. If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order, not inconsistent with the provisions of this Ordinance, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the appointed day.

V. V. GIRI,
President.

S. K. MAITRA,
Joint Secy. to the Government of India.